2043

48TH CONGRESS, 1st Session. SENATE. EX. DOC. No. 14.

M-9
15,-!

MESSAGE

FROM THE

PRESIDENT OF THE UNITED STATES,

TRANSMITTING

A communication of the 12th instant from the Secretary of the Interior, submitting report of Commissioner of Indian Affairs of December 8, 1883, on the subject of the "Old Settler" or "Western Cherokees."

DECEMBER 19, 1883.—Read and referred to the Committee on Indian Affairs and ordered to be printed.

To the Senate and House of Representatives:

I transmit herewith a communication of the 12th instant from the Secretary of the Interior submitting a report of the Commissioner of Indian Affairs of December 8, 1883, and accompanying papers, on the subject of the "Old Settler" or "Western Cherokees."

CHESTER A. ARTHUR.

EXECUTIVE MANSION,
December 17, 1883.

DEPARTMENT OF THE INTERIOR,
Washington, December 12, 1883.

SIR: I have the honor to submit herewith a copy of report from the Commissioner of Indian Affairs of the 8th instant, with its inclosures, on the subject of the claim of the "Old Settler" or "Western Cherokees."

By a provision in the sundry civil appropriation act, approved August 7, 1882, the Secretary of the Interior was required to investigate this and other matters relating to the several bands of Cherokee Indians, and report to Congress thereon.

The report (extract herewith) submitting the result of the investigation made upon this subject was submitted to the President by me on the 3d of February, 1883, and by him laid before the Senate. (See S. Ex. Doc. No. 60, Forty-seventh Congress, second session.)

Congress took no definite action on the subject, owing, it is presumed, to the press of other business and the short time remaining before the final adjournment.

I have seen no reason to change the views expressed by me in my former report on the case; and, concurring in those of the Commissioner of Indian Affairs in his report of the 8th instant, above referred

to, favoring an early adjustment of the matter, I respectfully recommend that the papers may be presented to the Congress.

I have the honor to be, very respectfully, your obedient servant,

H. M. TELLER,
Secretary.

The PRESIDENT.

DEPARTMENT OF THE INTERIOR,
OFFICE OF INDIAN AFFAIRS,
Washington, December 8, 1883.

SIR: My report of January 31, 1883, and the report of Special Agent Clements, of January 24, 1883, upon the claim of the "Old Settlers" or "Western Cherokees," made in accordance with the act of August 7, 1882 (22 Stat., 328), were submitted by you to the President under date of February 3, 1883, and on the 7th of February the papers were transmitted by the President to Congress, but that body took no definite action looking to the adjustment of the claim, owing, no doubt, to the press of work and the want of time on account of the near approach of the end of the session.

I now have the honor to transmit herewith, in duplicate, the papers above referred to, with the request that the matter be again laid before Congress with a recommendation for early and favorable action.

This is a matter that has been pending for nearly half a century, and justice to the Indians and good faith on the part of the Government equally demand that it should be finally disposed of one way or the other.

If the claim is a just one, of which I have not the slightest doubt, it should be settled and paid at once; and if it is not, it is equally as important that it should be settled, for then its status will be fixed and the Indians will not be put to the large annual expense of a commissioner, holding councils, &c., to keep it alive.

I trust that Congress will give the claim early consideration.

Very respectfully, your obedient servant,

H. PRICE,
Commissioner.

The Hon. SECRETARY OF THE INTERIOR.

DEPARTMENT OF THE INTERIOR,
Washington February 3, 1883.

SIR: The Secretary of the Interior is required by an item (copy inclosed) in the sundry civil bill, approved August 7, 1882, to investigate and report to Congress on certain matters relating to the Cherokee Indians.

Mr. C. C. Clements was appointed special agent by this Department to make the investigation required. He has made several reports on the subject, two of which I have the honor to submit herewith, viz:

* * * * * * *

REPORT No. 3.—This report relates to the claims of the "Old Settler" or "Western Cherokee" Indians against the United States, based upon alleged errors committed by the officers of the Government having charge of and stating the accounts between the "Old Settlers" and the United States in relation to their interest in the proceeds of the sale of the Cherokee lands east of the Mississippi River under the treaty of 1835.

Mr. Clements reports that there is a balance due from the United States to the Old Settler Cherokees amounting to $421,653.68, together with interest at 5 per centum per annum from September 22, 1851.

This report, No. 3, is intended to take the place of a report on the same subject by Mr. Clements, dated December 12, 1882, which was transmitted by me to the President of the Senate *pro tem.*, December 16, 1882, in compliance with a Senate resolution calling therefor (printed in Ex. Doc. 17, Forty-seventh Congress, second session).

These reports, Nos. 2 and 3, have been carefully examined by the Commissioner of Indian Affairs, who reaches the same conclusions as does Mr. Clements, as shown by the closing statements of his report thereon, dated January 31, 1883, as follows:

"It must be understood that all the figures used in this report are as of the date of the several settlements and for the purpose *only* of determining what amount is due each class of claimants; and after making all deductions for payments properly

chargeable to the several funds, and allowing proper credits, it appears that there is due (not including interest) as follows: Cherokees, exclusive of 'Old Settlers,' the sum of $334,297.75; 'Old Settlers,' $421,653.68."

I have given these reports such careful examination and consideration as time and opportunity would permit, and am of opinion that they represent fair and just bases of settlement of the claims. The parties interested appear satisfied with the results reported.

* * * * * * *

I respectfully recommend that the accompanying papers be presented for the consideration of the Congress.

Very respectfully, your obedient servant,

H. M. TELLER,
Secretary.

To the PRESIDENT.

DEPARTMENT OF THE INTERIOR,
OFFICE OF INDIAN AFFAIRS,
Washington, January 31, 1883.

SIR: * * * * * * * * * *

REPORT No. 3.—This report is supplemental to, or rather intended to take the place of, Mr. Clement's report of December 12, 1882, upon the claim of the "Old Settlers," or Western Cherokees, against the United States, which claim is based upon alleged errors committed by the officers of the Government having charge of and stating the account between the "Old Settlers" and the United States in relation to their interest in the proceeds of the sale of the Cherokee lands east of the Mississippi River, under the treaty of 1835.

The facts and figures are given in full by Mr. Clements in his report on this subject, and his report No. 2, and it is not deemed necessary to restate them here. It is sufficient to say that—

1st. They received credit under the settlement made under the treaty of 1846 for one-third of the fund, and were chargeable with one-third of the items properly chargeable thereto.

2d. Independent of article 4 of the treaty of 1846, the "Old Settlers" were not chargeable with removal out of the $5,000,000 fund.

3d. Independent of that article, they should not be charged out of the $5,000,000 with the removal of the Eastern Cherokees for three reasons: (1) the "Old Settlers" removed themselves at their own expenses; (2) the Eastern Cherokees were not required to reimburse the "Old Settlers" under the treaty of 1835; and (3) the Government was required to remove the Eastern Cherokees.

4th. They were not properly chargeable with the removal of the Ross party of 13,148, because (1) the United States were to remove them; (2) an appropriation of $1,047,067 was made for that purpose, and for which the "Old Settlers" received no credit in the settlement under the treaty of 1846.

5th. They, having received credit for their proportion of the $600,000, under article 3 of the treaty of 1836, were chargeable with their proportion of that fund used for removal, &c., *i. e.*, 2,495 Indians, at $53.33 per head, amounting to $133,058.35.

6th. The Eastern Cherokees were properly chargeable with the removal of the Ross party, and therefore they received credit for the $1,047,067 appropriated by the act of June 12, 1838.

7th. In the settlement the $5,600,000 fund was charged with the removal and subsistence of 18,026 Indians, at $53.33⅓ per head, amounting to $961,386.66. The account would therefore stand thus:

ACCOUNT WITH THE WHOLE CHEROKEE PEOPLE.

	Dr.	Cr.
By amount appropriated by act of July 2, 1836, for lands under first article treaty of 1835		$5,000,000 00
By amount appropriated under third article treaty 1836, by act of July 2, 1836		600,000 00
By amount erroneously charged for removal of 2,495 [should be 18,026] Indians, at $53.33⅓ per head		961,386 66
To amount paid for improvements	$1,540,572 27	
To amount paid for ferries	159,572 12	
To amount paid for spoliations	264,894 09	
To removal and subsistence of 18,026 Indians, at $53.33⅓ per head	961,386 66	

	Dr.	Cr.
To debts, &c	$101,348 31	
To additional land purchased	500,000 00	
To amount invested as a permanent fund	500,880 00	
	4,028,653 45	$6,561,386 66
Deduct		4,028,653 45
Balance due as of date June 12, 1838		2,532,733 21
Of which amount the "Old Settlers" are entitled to one-third		844,244 40
"Old Settlers'" account		844,244 40
To one-third of unexpended balance of $600,000 appropriated under article 3 treaty 1836, viz, $39,300	$13,100 00	
To one-third of the cost of removing 2,495 Indians, at $53.33 per head, $133.058.35	44,352 78	
	57,452 78	844,244 40
Deduct		57,452 78
Balance due		786,791 62
By interest on balance ($786,791.62), at 5 per cent. from June 12, 1838, to September 22, 1851		522,342 21
To appropriation by act September 22, 1851	$532,896 90	
To interest allowed under same act	354,583 25	
	887,480 15	1,309,133 83
Deduct		887,480 15
Balance due "Old Settlers"		421,653 68

I may add that in the former report on this subject the investigation was confined to alleged errors committed by the accounting officers of the Government in the matter of calculation.

It seems, however, that in the examination of the claim of the Eastern Cherokees against the United States Mr. Clements concluded that it was not intended by the eighth article of the treaty of 1835, and the supplementary articles thereto, or subsequent Congressional legislation, that the $5,000,000 fund should be used to defray any expenses for removal and subsistence where made under the supervision and control of the United States; or for any reasonable expenses incurred by the Cherokees in removing themselves. These conclusions necessarily affected his former report and changed the balance found due the "Old Settlers" under the settlement provided by the fourth article of the treaty of 1846.

It must be understood that all the figures used in this report are as of the date of the several settlements, and for the purpose only of determining what amount is due each class of claimants; and after making all deductions for payments properly chargeable to the several funds, and allowing proper credits, it appears that there is due (not including interest) as follows: Cherokees, exclusive of "Old Settlers," the sum of $334,297.75; "Old Settlers," $421,653.68.

Very respectfully, your obedient servant,

H. PRICE,
Commissioner.

Hon. SECRETARY OF THE INTERIOR.

REPORT NO. 3.

DEPARTMENT OF THE INTERIOR,
Washington, D. C., January 24, 1883.

SIR: Referring to my report of December 12, 1882, to your Department, upon the claim of the "Old Settler" or Western Cherokee Indians against the United States, the Commissioner of Indian Affairs, in his letter of transmittal of the 14th ultimo, stated, "The subject matter treated of in this report and the amount found due may be very materially affected and changed when the other three questions connected with this one are examined. Mr. Clements, who makes this report, agrees with me in this. In view of these facts, I think it would be much safer for the Government and more equitable to all parties concerned to delay all Congressional action until all of the questions involved in which the Cherokee people are parties, either as between

themselves or the Government, can be examined and reported upon. I therefore recommend that no Congressional action be had until the report is made an entirety upon the question specified in the act of Congress authorizing their settlement, believing that to be the only safe course for the Government to pursue."

Subsequent investigations of other matters of dispute mentioned in his communication proved the wisdom of the Commissioner's recommendation. As stated in my former report, this claim is based upon alleged errors committed by the officers of the Government having charge of and stating the account between the "Old Settlers" and the United States in relation to their interests in the proceeds of the sale of the Cherokee lands east of the Mississippi River, as provided in the treaty of 1835, between the United States and the Cherokee Indians.

By the terms of the fourth article of the treaty of 1846, concluded between the United States and the Cherokee Indians, a basis of settlement of this claim was agreed upon as follows: "All the investments and expenditures which are properly chargeable upon the sums granted in the treaty of 1835, amounting in the whole to $5,600,000 (which investments and expenditures are particularly enumerated in the fifteenth article of the treaty of 1835), to be first deducted from said aggregate sum, thus ascertaining the residuum or amount which would, under such marshaling of accounts, be left for per capita distribution among the Cherokees emigrating under the treaty of 1835, excluding all extravagant and improper expenditures, and then allow to the 'Old Settlers,' or Western Cherokees, a sum equal to one-third part of said residuum to be distributed per capita to each individual of said party of 'Old Settlers,' or Western Cherokees. It is further agreed that, so far as the Western Cherokees are concerned, in estimating the expense of removal and subsistence of an Eastern Cherokee, to be charged to the aggregate fund of $5,600,000 above mentioned, the sums for removal and subsistence stipulated in the eighth article of the treaty of 1835, as commutation money in those cases in which the parties entitled to it removed themselves, shall be adopted. And as it affects the settlement with the Western Cherokees, there shall be no deduction from the fund above mentioned in consideration of any payments which may hereafter be made out of said fund; and it is hereby further understood and agreed that the principle above defined shall embrace all those Cherokees west of the Mississippi who emigrated prior to the treaty of 1835." (Rev. Ind. Treaties, pp. 81-82.)

The investments and expenditures to be deducted from the $5,600,000 fund, as enumerated in article fifteen of the treaty of 1835, are for improvements, ferries, claims for spoliations, removal, subsistence, debts and claims upon the Cherokee Nation, additional quantity of land, goods for the poorer class of Cherokees, and the several sums for the national fund. (*Ib.*, p. 75.)

By the fourth article of the supplementary articles to the treaty of 1835, the $100,000 appropriated in that treaty for the poorer classes of Cherokees was added to the permanent national fund, thereby increasing it to $500,000. (*Ib.*, p. 78.)

In the settlement with the "Old Settlers" or Western Cherokees, under the treaty of 1846, the eighth article of the treaty of 1835, to which reference is therein made, fixed the amount for removal and subsistence to be charged to the aggregate fund at $53 33 *per capita*. (*Ib.*, p. 70.)

The joint resolution of August 7, 1848, required the accounting officers of the Treasury to make to Congress a just and fair statement of the claims of the Cherokee Nation of Indians, according to the principles established by the treaty of August, 1846, between the United States and those Indians. This statement was submitted December 3, 1849 (Senate Ex. Doc. 176, Thirty-first Congress, first session), and was recognized and adopted by Congress in making a final settlement with said nation under the act of February 27, 1851 (9 Stat., p. 572-3), which appropriated the sum of $724,603.37, with interest, for that purpose. The same statement was also adopted by Congress, so far as applicable under the provisions of the fourth article of the treaty of 1846, in effecting a final settlement with the "Old Settlers" under the act of September 30, 1850 (9 Stat., p. 536), appropriating the sum of $532,896.90, with interest, in payment of their account against the United States. (Rep. 176, Senate Com., Thirty-first Congress, first session.)

In adopting the above statement made by the accounting officers of the Treasury, the "Old Settlers" are charged by the Senate committee "for removal and subsistence of 18,026 Indians, at $53.33⅓ per head, $961,386.66." I am satisfied that this is an overcharge. The eighth article of the treaty of 1835 provides that "the United States also agree and stipulate to remove the Cherokees to their new homes and to subsist them one year after their arrival there." (Rev. Ind. Treaties, p. 70.) This language imports pecuniary responsibility on the part of the Government, and, in the talk which was sent by President Jackson to the Cherokees to explain the advantage of that treaty, he mentions that the stipulations offered "provide for the removal, at the expense of the United States, of your whole people, and for their subsistence a year after arrival in their new country." It would seem that the Indians so under-

stood this matter, and that the Senate recognized the fact that all expenses incurred by them, for and on account of removal and subsistence, should be borne by the United States. In support of this proposition, articles 2 and 3 of the supplementary articles to the treaty of 1835 provide that, "Whereas the Cherokee people have supposed that the sum of $5,000,000, fixed by the Senate in their resolution of — day of March, 1835, as the value of the Cherokee lands and possession east of the Mississippi River, was not intended to include the amount which may be required to remove them, nor the value of certain claims which many of their people had against citizens of the United States, which suggestion has been confirmed by the opinion expressed to the War Department by some of the Senators who voted upon the question; and whereas the President is willing that this subject should be referred to the Senate for their consideration, and if it was not intended by the Senate that the above-mentioned sum of $5,000,000 should include the objects herein specified, that in that case such further provision should be made therefor as might appear to the Senate to be just. It is therefore agreed that the sum of $600,000 shall be, and the same is hereby, allowed to the Cherokee people to include the expense of their removal and all claims of every nature and description against the Government of the United States not herein otherwise expressly provided for, and to be in lieu of the said reservations and pre-emptions (provided for in articles 12 and 13 of the treaty), and of the sum of $300,000 for spoliations described in the first article of the above-mentioned treaty. This sum of $600,000 shall be applied and distributed agreeably to the provisions of the said treaty, and any surplus which may remain after removal and payment of the claims so ascertained shall be turned over and belong to the education fund." (*Ib.*, p. 78.)

Hon. Casey A. Harris, Commissioner of Indian Affairs, in his letter of July 25, 1836, to the board of commissioners authorized by the seventeenth article of the treaty to examine and adjudicate Cherokee claims, refers to the above supplementary article, as follows: "The sum of $300,000 is appropriated to pay claims for spoliations; if they should fall short of this sum, the balance will be applicable to the expenses of removing the Cherokees."

Again, in his letter of January 25, 1838, to Lieutenant Van Horn, disbursing agent for the removal and subsistence of those Indians, the Commissioner says: "The claims for which requisitions have been made by the commissioners amount to $210,000, and the remittances which have been made for your use are $305,000. There will then be a balance of $90,000, applicable to other objects than the payment for abandoned improvements, &c., and which you will apply to the satisfaction of claims for commutation of subsistence and others of a similar character." (See records Indian Office.)

There is further evidence in support of the proposition that the treaty of 1835-'36 contemplated that the expense of removal and subsistence should be paid by the United States, and that the "Old Settlers" or Western Cherokees, were properly chargeable only with the number actually removed and subsisted out of the $600,000 allowed by the third supplementary article to the treaty of 1835 for that and other purposes, and to this evidence I will now call your attention.

The treaty of 1835-'36 was finally ratified on the 23d of May, 1836, and by its provisions the Cherokees were required to remove within two years. (Rev. Ind. Treaties, pp. 75, 79.) The time elapsed May 23, 1838. It had been concluded, in defiance of the protest of a large majority, with a small minority of the nation, who saw no other escape from threatened ruin. Within that period, those who had favored the treaty had mostly emigrated to the West under its provisions. The large majority of the nation, adopting the counsels of John Ross—a man represented as of unlimited influence among them—had obstinately withstood all the efforts of the Government to induce them to adopt the treaty and emigrate under its provisions. Ross and his party had constantly repudiated its obligations and denounced it as a fraud upon their nation. In the mean time, the United States had appointed its agents under the treaty, and collected a large military force to enforce the execution of the treaty. The State of Georgia had adopted a system of hostile legislation, intended to drive them from the country. She had surveyed the country and disposed of the homes of the Cherokees by lottery, dispossessed them of their lands, subjected them to her laws, while she disqualified them to hold any political or civil rights. In this posture of affairs the Cherokees, who had never abandoned the vain hope of remaining in the country, or obtaining better terms from the United States, through John Ross and others, made new proposals to the United States for the sale of their country and emigration to the West. Still pursuing the idea that they were aliens to the treaty of 1835, and unfettered by its provisions, they proposed to release all claim to their country and emigrate for a named sum of money, in connection with other conditions, among which was the stipulation that they should be allowed to take charge of their own emigration, and that the United States should pay the expense of their removal. To avoid the necessity of enforcing the treaty at the point of the bayonet, and to relieve itself of its counter obligations to Georgia by the compact of 1802, and to the Cherokees by the treaties of 1817 and 1819, the pro-

posal was readily acceded to. On the 18th of May, 1838, Mr. Poinsett, then Secretary of War, addressed a reply to the proposals of the Cherokee delegation, in which he says: "If it be desired by the Cherokee Nation that their own agents should have the charge of their emigration, their wishes will be complied with, and instructions be given to the commanding general in the Cherokee country to enter into arrangements with them to that effect. With regard to the expense of this operation, which you ask may be defrayed by the United States, in the opinion of the undersigned the request ought to be granted, and an application for such further sum as may be required for this purpose shall be made to Congress." The application was made, and a resolution of the House of Representatives adopted, inquiring how much would be required for that purpose. The Secretary of War replied to this resolution on the 25th of May, 1838, from which the following is an extract:

"The payment of the expenses of removing the remaining Cherokees, estimated at 15,840, at $30 a head	$475,200
"Amount applicable to that purpose	39,300
"Balance to be provided for	335,900

"If it should be deemed proper to make any further provision for the payment of the subsistence of the emigrants for one year after their arrival in the West, it requires, estimating the whole number at 18,332, thereby including those who have already emigrated, and allowing the amount stipulated to be paid by treaty, viz, $33.33 a head, $611,105.55."

These estimates, with a message containing the provisional arrangement with John Ross, were communicated to Congress and received its sanction by the act of June 12, 1838, in the following language:

"That the sum of $1,047,067 be appropriated out of any money in the Treasury not otherwise appropriated, in full for all objects specified in the third article of the treaty of 1835, between the United States and the Cherokees, and for the further object of aiding in the subsistence of the Indians for one year after their removal West: *Provided*, That no part of the said sum of money shall be deducted from the $5,000,000 stipulated to be paid to said tribe of Indians by said treaty: *And provided further*, That the said Indians shall receive no benefits from said appropriation unless they shall complete their emigration within such time as the President shall deem reasonable, and without coercion on the part of the Government."

Here was a clear legislative affirmation of the terms offered by the Indians and acceded to by the Secretary of War. It was agreed by the Secretary of War to consider the expenses of removal and subsistence, as intended by the treaty of 1835, to be borne by the United States, and Congress affirmed his act by providing that no part of the $1,047,067 should be taken from the treaty fund. It was made auxiliary to the $600,000 provided for in the third supplemental article, a fund for removal and other expenditures independent of the treaty fund and in full of these objects.

It will be observed that the act of June 12, 1838, provides that a part of the sum appropriated was for the "object of aiding in the subsistence of the Indians for one year after their removal West. The actual expense of subsistence was found to be $800,528.31, being in excess of the estimate on which the appropriation was based, of $189,422.76, and this excess was provided for by the act of September 30, 1850. (9th Stat., p. 556, and Rep. 176, Senate Com., Thirty-first Congress, first session.)

Here, then, was a total allowance and appropriation of $1,836,489.76 mainly to pay the expenses incurred by the removal and subsistence of the Cherokees.

Notwithstanding the circumstances which surrounded these last appropriations, it is not, perhaps, fair to assume nor reasonable to suppose that in their action Congress was influenced solely by considerations of public policy. It would seem, rather, that they recognized the fact that the Cherokees had some grounds at least for the interpretation of the treaty of 1835, making it obligatory upon the United States to emigrate them to their new homes and subsist them for one year after their removal.

Now, if the Government was bound by the terms of that treaty to remove and subsist these Indians at the expense of the United States. no part of the $5,000,000 fund was properly chargeable with those expenditures; but the $600,000 allowed by the third supplementary article to that treaty, appropriated July 2, 1836, the appropriation of $1,047,067 on July 12, 1838, and the appropriation of $189,422.76 on September 30, 1850, were alone available for these purposes.

I assume that the "Old Settlers" were properly chargeable with all expenses incurred for removal and subsistence which were paid out of the $600,000 fund, and for these expenses alone; otherwise they would have been entitled to credit for the subsequent appropriations made to meet those expenditures. The appropriation of $1,047,067 in June, 1838, was for a specific purpose. It was in full for the removal and to aid in the subsistence of the Cherokees then east of the Mississippi. The Cherokees then east were properly chargeable with those expenses, at least to the extent of that appro-

priation, and therefore in the settlement with them, under the ninth article of the treaty of 1846, they were entitled to credit for that amount. If the "Old Settlers" were to be charged with the removal and subsistence of the Cherokees who emigrated after June 12, 1838, I am unable to understand why they were not also entitled to a credit for the appropriation made for their emigration and subsistence.

To determine, then, the number of Cherokees removed prior to June 12, 1838, under the provisions of the treaty of 1835, is deemed important in arriving at a fair and equitable settlement of the claim of the Western Cherokees, and this has been found exceedingly difficult. According to the estimates made by the Secretary of War in his letter of May 25, 1838, to Congress, the number was about 2,495. On the other hand, the Cherokee census of 1835 shows that the whole number of Indians then east of the Mississippi was about 16,743 (Senate Doc. 120, p. 535, Twenty-fifth Congress, second session). Of this number John Ross removed about 13,149 after June 12, 1838 (Ex. Doc. 65, p. 17, H. R., Thirtieth Congress, first session), and the number then remaining, as shown by the Mullay roll, in the Indian Office, was 1,517. This would make about 2,077 removed prior to the emigration under Ross.

For the purposes of this settlement, I have adopted the estimates of the Secretary of War. The appropriation of June 12, 1838, was based upon these estimates in so far as they related to the number of Indians then to be removed, and it would seem that the conditions were then more favorable for ascertaining the actual population of the nation than when the census was taken.

I am, therefore, inclined to the opinion that a fair and equitable statement of the "Old Settlers," or Western Cherokee Indians, against the United States would be as follows:

CR.

By the fund provided by the treaty of 1835–'36		$5,600,000 00
From which are to be deducted, under the fourth article of the treaty of 1846, the sums "properly chargeable" under the fifteenth article of the treaty of 1835, which, according to the report of the accounting officers (except for removal and subsistence), will stand thus:		
For improvements	$1,540,572 27	
For ferries	159,572 12	
For spoliations	264,894 09	
For removal and subsistence of 2,495 Indians, at $53.33 a head	133,058 35	
Debts and claims upon the Cherokee Nation, viz:		
National debts (tenth article)	$13,062 06	
Claims of United States citizens (tenth article)	61,073 49	
Cherokee committee (twelfth article)	22,212 76	
	101,348 31	
Amount allowed United States for additional quantity of land ceded	500,000 00	
Amount invested as general fund of the nation	500,880 00	
Unexpended balance of the $600,000 appropriation	39,300 00	
Making in the aggregate the sum of		3,239,625 14
Which, being deducted from the treaty fund of $5,600,000, leaves the residuum, contemplated by the fourth article of the treaty of 1846, of		2,360,374 86
Of which amount one-third is to be allowed to the "Old Settlers," being		786,791 62
Together with interest thereon at 5 per cent. per annum from June 12, 1838, to September 22, 1851, when a payment of $532,896.90, with interest, was made (Cong. Globe, p. 1760, Thirty-first Congress, thirty-first session, and act September 30, 1850, 9th Stat., p. 556)		522,342 21
Deduct above payment, with interest, as credited		887,480 15
Balance due the "Old Settlers"		451,653 68

Together with interest thereon at 5 per cent. per annum from September 22, 1851, as provided by Senate resolution of September 5, 1850 (Cong. Globe, vol. 21, part 2, p. 1760, 1849–'50).

Respecting the collection and distribution of the moneys due these Indians, it appears that, acting under the authority of that clause of the second article of the treaty of 1846 which provides that "all party distinctions shall cease, except so far as they may be necessary to carry out this convention or treaty," the "Old Settlers" held a convention or council November 22, 1875, at Tahlequah, the capital of the Cherokee Nation, for the consideration and determination of the best course to pur-

sue and means to be adopted by them to secure a fair and just settlement with the United States of all matters under or growing out of said treaties. That convention resolved to prosecute their claim to a speedy, just, and final settlement and payment of what should upon such a settlement be found due from the United States, and to that end appointed three of their own people as commissioners, with full power and authority to represent them in the prosecution of their claim. These commissioners were also authorized to employ such legal assistance as they might deem necessary to a successful prosecution of the claim, and for the purpose of defraying all the expenses of said prosecution the convention or council set apart and appropriated 35 per cent. of whatever sum might thus be recovered or secured to said Indians, "or so much thereof as might be necessary" for that purpose. A duly attested copy of the proceedings of that convention is now on file in this Department.

A similar council of these Indians was held at the same place on April 28, 1877, when J. M. Bryan, esq., one of their commissioners, was appointed their treasurer, and authorized to receive from and receipt to the proper officer or officers of the Government for the 35 per cent. thus set apart for the purposes above stated. This authority, conferred upon Mr. Bryan as their commissioner and treasurer, was reaffirmed and continued by similar councils held at the same place November 20, 1880, November 17, 1881, and October 13, 1882. By the resolutions of their council of November 17, 1881, the objects for which the sum of 35 per cent. was set apart and appropriated by the council of 1875 are specifically enumerated as follows, namely:

"To pay the expenses of the several councils held by their people for the purpose of considering and directing the collection of their claim from 1875 until the same should be collected and final payment and full settlement made with their treasurer; to repay moneys borrowed by the 'Old Settlers' for the purpose of prosecuting their claim; to pay their commissioners for their services and expenses; to pay their treasurer for his services; and to pay attorneys employed by their commissioner and treasurer, according to contracts with them for services actually rendered in the prosecution of their claim."

At the last council held by the Indians, on October 13, 1882, the following resolutions were unanimously adopted, viz:

"Whereas we, the 'Old Settler' or Western Cherokee Indians, have ever since about the year 1851 been appealing either to the Department of the Interior of the United States or Congress, praying for the settlement and payment of our claims arising against the General Government, growing out of the treaties between our people and the United States, and the several acts of Congress in relation thereto: Therefore,

"1st. *Be it resolved by the 'Old Settler,' or Western Cherokee Indians in general council assembled,* That we fully and highly appreciate the action of Congress in inserting a provision in the bill making appropriations for sundry civil expenses of the Government for the fiscal year ending June 30, 1883, and for other purposes, authorizing and directing the honorable Secretary of the Interior to investigate and report to Congress what, in his opinion, would be an equitable settlement of all matters of dispute between any bands or parts of the Cherokee Indians and the United States arising from or growing out of treaty stipulations or the laws of Congress relating thereto; and that, though our claims have been long deferred, we hereby express our thanks to Congress for thus providing for a just and equitable settlement with us.

"2d. *Be it resolved,* That we respectfully but earnestly request that Congress, in making necessary appropriations to pay whatever amount may be found to be due us as such 'Old Settler' or Western Cherokee Indians upon such investigation and report by the honorable Secretary of the Interior, shall direct the payment of the same to be made in accordance with the resolution for that purpose, adopted by the general council of the 'Old Settler' or Western Cherokee Indians on the 22d of November, 1875, and which has been reaffirmed by said Indians by like general councils, held respectively in 1876, 1877, 1879, 1880, 1881, and which we do hereby again reaffirm, and ask that the per cent. therein named be paid to Col. J. M. Bryan, our special commissioner to prosecute our said claims, and our treasurer, to be applied by him as stipulated and provided in said resolution of November 22, 1875, and that the said J. M. Bryan be, and he is hereby, authorized and fully empowered to receive from the proper disbursing officer or officers of the United States the amount of said per cent. upon whatever sum may be allowed said Indians and appropriated by Congress as aforesaid, and to execute a receipt in full therefor to the United States for, and on behalf of, all of said 'Old Settler' or Western Cherokee Indians, and that the balance of such amount so found due, and to be distributed per capita to each and every 'Old Settler' or Western Cherokee Indian, according to the fourth article of the treaty of 1846: *Provided,* That before the said J. M. Bryan, treasurer and commissioner of the 'Old Settler' Cherokees, draws the amount of (35 per cent.) 35 per cent., as above provided, he shall be required to file a bond to the satisfaction of the Secretary of the Interior, conditioned upon disbursing the said money according to the authority granted him by the 'Old Settlers' conventions of 1875 to 1882, inclusive."

Duly certified copies of the proceedings of the several councils, as above mentioned, are now on file in the Interior Department.

Therefore, in view of all the facts stated in this report, I recommend that an appropriation be made to pay the said sum of $421,653.68, with interest, so found due the "Old Settler" or Western Cherokee Indians, and that the same be paid in accordance with their request, as expressed by them in their several resolutions above mentioned and the fourth article of the treaty of 1846.

Very respectfully,

C. C. CLEMENTS,
Special Agent.

The Hon. SECRETARY OF THE INTERIOR.